



FOR CLERK USE ONLY

City Council

Item No. _____

CITY COUNCIL AGENDA FACT SHEET

City Manager _____

Department _____

April 20, 2010

Requested Date _____

1. Request:

Council Approval ☒Other (specify) ☐Information Only/
Presentation ☐Hearing ☒

2. Requested Action:

RDA PUBLIC HEARING FOR APPROVAL OF SALE OF REAL PROPERTY BY
THE AGENCY TO CALEXICO M.O.B. LLC VIA A DISPOSITION AND DEVELOPMENT AGREEMENT

3. Fiscal Impact:

Revenue:

Increase ☐Decrease ☐

Cost:

Increase ☒Decrease ☐Does Not Apply ☐

Source: _____

Amount: \$ _____

Source: _____

Amount: _____

RDA tax increment/RDA fund

\$540K purchase price/ongoing

4. Reviewed By:

Finance Dept. on _____

By: _____

Comments: _____

City Attorney on _____

Apr 13, 2010

By: _____

Comments: _____

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE: _____

Action ☐Consent ☐Hearing ☐Filing ☐Presentation ☐Other(specify) ☐

Reviewed by: City Clerk _____

Date _____

City Manager _____

Date _____

AGENCY AGENDA REPORT

SUBJECT: APPROVAL OF SALE OF REAL PROPERTY BY THE AGENCY TO CALEXICO M.O.B. LLC VIA DISPOSITION AND DEVELOPMENT AGREEMENT TO DEVELOP A NEW MEDICAL FACILITY

AGENDA DATE: April 20, 2010

PREPARED BY: Victor Carrillo, Executive Director

APPROVED FOR AGENDA BY: Victor Carrillo, City Manager

RECOMMENDATION: Consider project and approve DDA.

FISCAL IMPACT: The property is currently owned by the RDA. The RDA will receive \$540,000 for the purchase of this parcel and will receive increased tax increment revenues based on the redevelopment of the site.

ENVIRONMENTAL REVIEW: This proposed land transfer is exempt from CEQA pursuant to Section 15332 "In-Fill Development Projects" because it is consistent with the applicable General Plan and Zoning designations, the development is less than 5 acres in size, and is substantially surrounded by urban uses.

BACKGROUND: The RDA has owned the land underlying the movie theater at 2441 Scaroni Avenue since August 2008. In October 2007, the RDA purchased the movie theater building. The RDA then did an RFP to receive development proposals for the site. Pacific Media Properties dba Calexico Medical Office Building LLC was one of the parties who submitted a development proposal. The RDA decided that it would prefer to split the parcel at 2441 Scaroni into 3 legal parcels. The parcel split has been approved and the final map will be recorded soon. The RDA entered into an exclusive negotiating agreement with Pacific Media Properties dba Calexico Medical Office Building LLC to purchase PARCEL 1 on Parcel Map No. 059-010-042 that resulted from the parcel split. The RDA reached a tentative agreement regarding the price and terms of the DDA several months ago and therefore, the DDA that is before the Board for approval evidences that proposed agreement.

DISCUSSION (Current consideration):

The matter that is now before the Board consists of a land transfer arrangement in which the RDA agrees to sell Parcel 1 to Calexico M.O.B. LLC for \$525,000 in exchange for Calexico M.O.B. agreeing to develop and use the site as a medical facility which will create new jobs in the fields of clerical, medical technicians and medical doctors. Since the parcel to be sold to Calexico M.O.B. is currently in use solely as a parking lot and is under-utilized, this proposed project will eliminate blight and create new opportunities for the citizens of Calexico. The movie theaters have experienced low attendance in the last several years, and the RDA needs to assist in this development to eliminate blight

Under Government Code section 65402, prior to the RDA selling or acquiring any land, the "location, purpose and extent" of a land acquisition or sale must be reported to the Planning Commission, and the Planning Commission must issue a resolution as to the conformity of the sale/acquisition with the General Plan. The Planning Commission has approved a resolution finding that this proposed land transfer agreement was in conformity with the General Plan.

The development of the site requires Site Plan Review and Approval pursuant to Section 17.01.710 of the Calexico Municipal Code (CMC). Calexico M.O.B. has already submitted the appropriate application to develop this land as a medical office facility so that as soon as escrow closes on this DDA, Calexico M.O.B. will be able to proceed with the development of this project. The development at the site does require a Reciprocal Parking and Access Agreement between Calexico M.O.B., LLC, the Community Redevelopment Agency of the City of Calexico, and Metropolitan Theatres Corporation. This parking agreement was approved by the City Council on March 30, 2010. However, the execution of the parking agreement will be a condition precedent to the close of escrow.

Further, since the entire site at 2441 Scaroni Avenue was previously leased to Metropolitan Theatres Corporation, the Fourth Amendment to Lease by and between the Community Redevelopment Agency of the City of Calexico and the Metropolitan Theatres Corporation needs to be executed before the close of escrow on this DDA to reduce the amount of land that is leased to MTC.

STAFF'S RECOMMENDATION:

Consider project and approve DDA. Staff is recommending approval of this item because the land transfer will benefit the City and Agency, specifically to implement the Redevelopment Plan to eliminate blight in the Redevelopment Project, increase employment opportunities within the Redevelopment Project, and to generate additional property taxes with which the community can assist in providing an environment for the social, economic and psychological growth and well-being of the citizens of the City.

ATTACHMENTS

1. Disposition & Development Agreement w/ attachments
2. Resolution

Agenda Item No. ____ Page ____
Of ____

RESOLUTION NO. 2010-_____

**A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF CALEXICO AUTHORIZING THE SALE OF REAL PROPERTY BY THE
AGENCY TO CALEXICO M.O.B. LLC AND APPROVING THE DISPOSITION AND
DEVELOPMENT AGREEMENT TO DEVELOP A NEW MEDICAL FACILITY**

WHEREAS, Health and Safety Code section 33430 allows the Community Redevelopment Agency of the City of Calexico ("Agency") to dispose of real property by sale; and

WHEREAS, the Agency currently owns parcel 1 at 2441 Scaroni Road, APN 059-010-042, "Parcel 1" and now intends to sell it to Calexico M.O.B. via a Disposition and Development Agreement ("DDA"); and

WHEREAS, Parcel 1 may have been acquired in whole or in part, directly or indirectly, with a portion of taxes allocated and paid to it pursuant to subdivision (b) of Section 33670 of the California Community Redevelopment Law ("CCRL") and the Agency prepared a report pursuant to Health and Safety Code section 33433; and

WHEREAS, the City Council held a noticed public hearing on April 20, 2010, in accordance with Health and Safety Code section 33433, and made the necessary findings for the sale by the Agency of Parcel 1; and

WHEREAS, the Agency held a noticed public hearing on April 20, 2010 in accordance with Health and Safety Code section 33431; and

WHEREAS, conditions of the DDA require that Calexico M.O.B. develop the property as a medical facility which will create jobs; and

WHEREAS, the purchase price of Parcel 1 is not less than the fair market value at its highest and best use in accordance with the plan, therefore this proposed DDA is consistent with State law; and

WHEREAS, the sale of Parcel 1 is beneficial to the Agency because the development of the project will implement the Redevelopment Plan to eliminate blight in the Redevelopment Project, increase employment opportunities within the Redevelopment Project, and to generate additional property taxes with which the community can assist in providing an environment for the social, economic and psychological growth and well-being of the citizens of the City and the community; and

WHEREAS, the sale by the Agency of Parcel 1 is in furtherance of and is consistent with the Implementation Plan adopted by the Agency pursuant to CCRL 33490, among other things to assist in the elimination of one or more blighting conditions inside the Project Area as defined in Section 33031 of the CCRL; and

WHEREAS, the Calexico Planning Commission adopted a resolution finding that this land transfer conforms with the General Plan pursuant to Government Code section 65402; and

WHEREAS, the Agency Board now wishes to approve the land transfer and the DDA.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO AS FOLLOWS:

SECTION 1. The Agency Board finds that the above-listed recitals are true and correct.

SECTION 2. The Agency Board hereby approves the sale of Parcel 1 because it is in the best interests of the Agency and the community, and is in furtherance of and consistent with the Implementation Plan adopted by the Agency.

SECTION 3. The Agency Board further approves the DDA and authorizes and directs the Executive Director to execute the Agreement and to take such actions and execute such other documents as necessary towards implementation and furtherance of the DDA.

PASSED, ADOPTED, AND APPROVED by the Community Redevelopment Agency of the City of Calexico at a meeting this 20th day of April, 2010.

DAVID B. OUZAN, Chairman

ATTEST:

VICTOR CARRILLO, Secretary

APPROVED AS TO FORM:

JENNIFER M. LYON, Agency Counsel

STATE OF CALIFORNIA)
CITY OF CALEXICO) ss.
COUNTY OF IMPERIAL)

I, _____, Clerk of the Calexico Community Redevelopment Agency, do hereby certify under the penalty of perjury, that the foregoing Resolution No. _____, was duly adopted by the Agency Board at a meeting of said Agency held on the 20th day of April, 2010, and that it was so adopted by the following vote:

AYES:

NOES:

ABSTAIN:
ABSENT:

LOURDES CORDOVA, Clerk
Calexico Community Redevelopment
Agency

[w1]

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

**COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF
CALEXICO**

and

Calexico M.O.B, LLC, Developer

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO ("Agency") and Calexico M.O.B., LLC, a California limited liability company ("Developer"), who are referred to in this Agreement individually as a "Party" and collectively as the "Parties." The Parties agree as follows:

1. SUBJECT OF AGREEMENT

101. General Statement

The purpose of this Agreement is to effectuate the Merged Central Business District and Residential Redevelopment Project (the "Redevelopment Plan") by providing for the disposition and development of the Site (defined below).

The Agency is authorized and empowered under the Community Redevelopment Law, to enter into agreements for the acquisition, disposition, exchange, and development of real property and otherwise to assist in the redevelopment of real property within a redevelopment project area in conformity with a redevelopment plan adopted for such area; to acquire real and personal property in redevelopment project areas; to receive consideration for the provision by the Agency of redevelopment assistance; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and to incur indebtedness to finance or refinance redevelopment projects.

The Agency and the Developer desire to enter into this Agreement in order to implement the provisions of the Redevelopment Plan by providing for the sale of the Site for the purposes stated herein and because, pursuant to the Community Redevelopment Law and the Redevelopment Plan, such actions will help to eliminate blight in the Redevelopment Project, increase the employment opportunities within the Redevelopment Project, generate additional property taxes with which the community can assist in providing an environment for the social, economic and psychological growth and well-being of the citizens of the City.

The development of the Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Calexico and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

The execution of this Agreement requires that all parties engage in further actions to finalize the transactions necessary to complete this Agreement. All parties will use their best efforts to complete the necessary steps under this Agreement. Nothing herein shall require the Agency to reach a particular result in any matter that requires a public hearing or the exercise of future discretion as specified herein.

102. Definitions

For purposes of this Agreement, the following capitalized terms shall have the following meanings:

“Agency” shall mean the Community Redevelopment Agency of the City of Calexico, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law, and any assignee of or successor to its rights, powers and responsibilities.

“Agency Deed of Trust” shall mean the deed of trust in the form of Attachment No. 8 hereto which is incorporated herein by reference.

“Agreement” means this Disposition and Development Agreement by and between the Agency and the Developer.

“Certificate of Completion” means the document which evidences Developer’s satisfactory completion of the Improvements, as set forth in Section 322 hereof, in the form of Attachment No. 6 hereto which is incorporated herein by reference.

“City” shall mean the City of Calexico, California.

“Closing” or “Close of Escrow” is defined in Section 209.

“Closing Date” shall mean the date on which the Closing is scheduled to take place.

“Community Redevelopment Law” means California Health and Safety Code Sections 33000, et seq. as the same now exists or may hereafter be amended.

“Completion” shall mean the point in time when the Agency issues the Certificate of Completion pursuant to Section 322 of this Agreement.

“Conditions, Covenants and Restrictions” or “CC&R’s”) shall mean the conditions, covenants and restrictions as required by this Agreement.

“Default” means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

“Default Notice” is defined in Section 501.

“Development” means the construction of the Improvements.

“Developer” means Calexico M.O.B., LLC; a California limited liability company, and any assignee or successor to the Developer permitted pursuant to the terms of this Agreement.

"Escrow Agent" shall mean Lawyers Title Insurance Company, or another escrow agent mutually acceptable to Agency and Developer.

"Grant Deed" shall mean the instrument by which Agency shall convey fee title to the Site to the Developer which is attached hereto as Attachment No. 4 and incorporated herein by reference.

"Hazardous Materials" shall mean and include the following:

- (A) a "Hazardous Substance," "Hazardous Material," "Hazardous Waste," or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.;
- (B) an "Extremely Hazardous Waste," a "Hazardous Waste," or a "Restricted Hazardous Waste," under sections 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to sections 25140 or 44321 of the California Health and Safety Code;
- (C) a "Hazardous Material," "Hazardous Substance," "Hazardous Waste," "Toxic Air Contaminant," or "Medical Waste" under sections 2581, 25316, 25501, 25501.1, 25023.2, or 39655 of the California Health and Safety Code;
- (D) "Oil" or a "Hazardous Substance" listed or identified pursuant to section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance or by-product;
- (E) listed or defined as a "Hazardous Waste," "Extremely Hazardous Waste," or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;
- (F) listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to section 25249.9(a) of the California Health and Safety Code;
- (G) a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any applicable governing law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;
- (H) any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual,

whether or not the presence of such material resulted from a leaking underground fuel tank;

- (I) pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136, et seq.;
- (J) asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.;
- (K) any radioactive material including, without limitation, any "source material," "special nuclear material," "by-product material," "low-level wastes," "high-level radioactive waste," "spent nuclear fuel" or "transuranic waste," and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011, et seq., the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101, et. seq., or pursuant to the California Radiation Control Law, California Health and Safety Code §§ 25800, et. seq.;
- (L) regulated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651, et seq., or the California Occupational Safety and Health Act, California Labor Code §§ 6300, et seq.; and/or
- (M) regulated under the Clean Air Act, 42 U.S.C. §§ 7401, et seq., or pursuant to Division 26 of the California Health and Safety Code.

"Improvements" shall mean the construction of a two-story building as a medical facility as described in the Scope of Development, to be operated as provided in Section 401 of this Agreement.

"Legal Description" shall mean the legal description of the Site attached to this Agreement as Attachment No. 5 which is incorporated into the Agreement by this reference.

"Memorandum of Agreement" shall mean the Memorandum of Agreement attached hereto as Attachment No. 7 and incorporated herein by this reference.

"Method of Financing" shall mean those methods as provided in Section 315.

"Notice" is defined in Section 601 hereof. As used herein, the term "Notice" includes a Default Notice.

"Outside Date" is defined in Section 209.

"Permitted Construction Loan" shall mean the construction loan or loans to be made by a lender or lenders to finance the cost of development of the Site, as described in Method of Financing in Section 315.

"Permitted Construction Loan Deed of Trust" shall mean the deed of trust securing the Permitted Construction Loan.

"Permitted Mortgage" is defined in Section 316.

"Permitted Mortgagee" is defined in Section 317.

"Permitted Transfers" is defined in Section 107.

"Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign.

"Project" shall mean and refers to the Site and the Improvements to be constructed thereon.

"Property" shall mean the real property described in Section 104 hereof.

"Redevelopment Plan" means the Redevelopment Plan for the Merged Central Business District and Residential Redevelopment Project and amended from time to time. The Redevelopment Plan for the Central Business District Redevelopment Project was adopted and approved by Ordinance No. 826 of the City of Callexico on July 20, 1982. The Redevelopment Plan for the Residential Redevelopment Project was approved and adopted by Ordinance No. 760 on June 5, 1979 and was amended by Ordinance No. 857 adopted by the City Council on September 6, 1983. The Project Areas were merged and re-designated the Merged Central Business District and Residential Redevelopment Project Area by Ordinance No. 864 adopted on November 20, 1984. The Merged Project Area was subsequently amended by Amendment No. 1 adopted by Ordinance No. 905 on July 18, 1989, by Amendment No. 2 adopted by Ordinance No. 920 adopted on July 7, 1992 and by Amendment No. 3 adopted by Ordinance No. 930 on December 21, 1993. Said ordinances and the Redevelopment Plan are incorporated herein by reference,

"Redevelopment Project" means the Merged Central Business District and Residential Redevelopment Project, adopted by the City pursuant to the Redevelopment Plan.

"Redevelopment Project Area" means the property which is within the Redevelopment Project.

"Schedule of Performance" shall mean the document attached to this Agreement as Attachment No. 2 which is incorporated into this document by this reference.

"Scope of Development" shall mean the document attached to this Agreement as Attachment No. 3 which is incorporated into this Agreement by this reference.

"Site" means the real property described in Sections 104 and 201 of this Agreement.

"Site Map" means the document which is attached to this document as Attachment No. 1 which is incorporated into this Agreement by this reference.

“Title Company” shall mean Chicago Title Company, or another title insurance company mutually acceptable to Agency and Developer.

“Title Insurance Policies” shall mean and include the following ALTA extended coverage policies of title insurance issued by the Title Company, subject to the Approved Title Conditions:

- a. An owner’s policy of title insurance in favor of Developer insuring the Developer’s fee title in the Site, in a liability amount to be determined by Developer (provided, Agency shall be responsible for the cost of the premium only to the extent described in Section 210) (the “Owner’s Title Policy”); and
- b. One or more mortgagees’ policies of title insurance in favor of each Permitted Mortgagee, insuring the lien of each Permitted Mortgage, in the amount of such Permitted Mortgage (the “Lender’s Title Policies”); and
- c. ~~A mortgagee’s policy of title insurance in favor of Agency, insuring the lien of the Agency Deed of Trust, in the amount of \$2,000,000 (the “Agency’s Title Policy”).~~
(Developer requests deletion---need to clarify if Agency wants to remove.)

103. Redevelopment Plan

This Agreement is subject to and in furtherance of the provisions of the Redevelopment Plan, which is incorporated into this Agreement and made a part of by this reference as though fully set forth in this Agreement.

104. The Site

The “Property” or “Site” is that property in the Merged Central Business District and Residential Redevelopment Project Area of the City of Calexico, illustrated on the “Site Map” (attached hereto as Attachment No. 1) and as described in the “Legal Description of the Property” (attached hereto as Attachment No. 5).

105. The Agency

- a. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California.
- b. The address of the Agency for purposes of receiving notices pursuant to this Agreement is 608 Heber Avenue, Calexico, California, 92231.
- c. “Agency” as used in this Agreement includes the Redevelopment Agency of the City of Calexico, California, acting through its Board, and any assignee or successor to its rights, powers and responsibilities.

d. "Agency Executive Director" as used in this Agreement includes the Agency Executive Director or designee.

106. Developer

a. The Developer, as of the date this Agreement is executed by the Agency, is Callexico M.O.B., LLC, a California limited liability company. Any notice which is required or which may be given pursuant to this Agreement may be delivered or mailed to the Developer as follows:

P.O. Box 2248

Orange, CA 92859

Physical address for overnite deliver: 18881 Fairhaven Avenue, Cowan Heights, CA 92705

With a copy to:

Thomas Roll, Attorney at Law

38 Technology Drive, Suite 250

Irvine, CA 92618

107. Assignments and Transfers

a. Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of redeveloping and providing a two-story medical facility on the Site and not for speculation in land holding. Developer further recognizes that the qualifications and identity of Developer are of particular concern to the City and the Agency, in light of the following: (1) the importance of the redevelopment of the Site to the general welfare of the community; (2) the public assistance that has been made available by law and by the government for the purpose of making such redevelopment possible; and (3) the fact that a change in ownership or control of Developer or any other act or transaction involving or resulting in a significant change in ownership or control of Developer, is for practical purposes a transfer or disposition of the property then owned by Developer. Developer further recognizes that it is because of such qualifications and identity that the Agency is entering into the Agreement with the Developer. For the period commencing upon the effective date of this Agreement and until Completion, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, nor shall the Developer make any sale, transfer, conveyance, assignment, subdivision, of the whole or any part of the Site or the Improvements thereon without prior reasonable written approval of Agency, except as expressly set forth in this Agreement.

b. Permitted Transfers. Prior to Completion, Developer shall not assign all or any part of this Agreement, or any interest, without the prior written approval of the Agency. Subject to review of documentation effectuating any such proposed assignment or transfer, the Agency agrees to reasonably give such approval if the assignment is any of the following (a "Permitted Transfer"):

(a) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements.

(b) Any requested assignment for financing purposes (subject to such financing being considered and approved by Agency pursuant to Section 315 herein), including the grant of a deed of trust to secure the funds necessary for construction and permanent financing of the Improvements.

(c) The conveyance or dedication of any portion of the Site to any entity associated or affiliated with Developer in so much as Developer substantially controls the entity and has a financial interest in such entity of not less than seventy-five percent (75%).

c. The Agency agrees that they will not unreasonably withhold approval of a request made pursuant to this Section 107, provided the Developer delivers written notice to the Agency requesting such approval. With respect to any proposed transfer prior to Completion, such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 107 and as reasonably determined by the Agency. The Agency shall evaluate each proposed transferee or assignee on the basis of its development and/or qualifications and experience and its financial commitments and resources, and may disapprove any proposed transferee or assignee, during the period for which this Section 107 applies, which the Agency determines does not possess acceptable qualifications reasonably similar to Developer. An assignment and assumption agreement in a form satisfactory to Agency's legal counsel shall also be required for all proposed assignments. Within thirty (30) days after the receipt of the Developer's written notice requesting Agency approval of an assignment or transfer pursuant to this Section 107, the Agency shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, Agency requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to the Agency such further information as may be reasonably requested.

d. In the event Agency shall approve any assignment or transfer pursuant to this Section 107, all of the terms, covenants and conditions of this Agreement shall be binding upon the Developer's permitted successors and assigns as of the effective date of such transfer and Developer's obligations or liability under this Agreement shall cease except 1) in the event that such obligations or liability specifically survive the expiration or earlier termination of this Agreement or 2) such transfer was for less than 100% of the Site in which case Developer's obligations shall remain unaffected for that portion not transferred.

e. For the reasons cited above, the Developer represents and agrees for itself and any successor in interest that prior to Completion, and without the prior written approval of the Agency, there shall be no significant change in the ownership of the Developer or with respect to

the identity of the parties in control of the Developer, by any method or means, except Permitted Transfers.

f. The Developer shall promptly notify the Agency of any and all changes whatsoever in the identity of the parties in control of the Developer or the degree of control which it or any of its officers have been notified or otherwise have knowledge or information. Except for Permitted Transfers, this Agreement may be terminated by the Agency, in its sole discretion, if there is any significant change (voluntary or involuntary) in membership, management or control, of the Developer or its associates prior to Completion.

g. The restrictions of this Section 107 shall terminate upon the Completion.

h. Notwithstanding any other provision to the contrary, the Agency and the City retain the full power and authority to exercise their legislative and administrative discretion with regard to any future legislative or quasi-judicial action referenced in this Agreement or required to perfect the respective rights of the parties herein. The Agency Board and the City Council shall retain their ability to exercise their independent judgment, as allowed by law, in any public hearing necessary to implement any provision required herein, but not yet performed.

2. DISPOSITION OF THE SITE

201. Agency Ownership of the Site

Agency owns the "Site", which is located in the Redevelopment Project Area, as depicted on the Site Map and more particularly described in the Legal Description which is attached hereto and incorporated herein by reference.

202. Sale and Purchase

a. Agreement to Sell and Purchase. In accordance with and subject to all the terms, covenants, and conditions of this Agreement, the Agency agrees to sell to the Developer and the Developer agrees to purchase the Site.

b. Purchase Price. The parties agree on the basis of an appraisal obtained by the Agency that the total value of the Site is Five Hundred and Forty Thousand Dollars (\$540,000.00). In consideration for the covenants, conditions and obligations contained herein, including but not limited to construct the Improvements, Developer agrees to pay Five Hundred and Forty Thousand Dollars (\$540,000.00) (the "Purchase Price") for the Site determined in accordance with California Health and Safety Code Section 33433.

c. Sale Payment. Within seven (7) business days of opening of Escrow for this land transfer, Developer shall deposit the amount of Fifty Thousand Dollars (\$50,000.00) for the Site ("Deposit"). The Deposit funds shall be credited against the Purchase Price at the Close of Escrow and shall be immediately released to the Agency. The Deposit shall be nonrefundable to Developer except for the following reasons: Developer is unable to acquire construction financing for the project within 90 days of Opening Escrow or if Agency terminates this

Agreement prior to Close of Escrow. If the Agreement is terminated for either of these two reasons, the Developer shall be entitled only to a refund of the amount of the Deposit that has not been expended by the City/Agency in furtherance of this Agreement and escrow.:- -Developer agrees to pay the balance of the Purchase Price to Agency in cash at Closing.

203. Escrow

a. Within the time set forth in the Schedule of Performance the parties shall open escrow (the "Escrow") with Chicago Title Insurance Company (the "Escrow Agent"). This Agreement constitutes the joint escrow instructions for the Agency and the Developer and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow. The Agency and the Developer shall provide such additional escrow instructions consistent with this Agreement as shall be necessary. The Escrow Agent is empowered to act under such instructions, and the Escrow Agent shall carry out its duties as Escrow Agent pursuant to the Agreement. The Agency and the Developer hereto agree to do all acts reasonably necessary to close the Escrow in accordance with the terms of this Agreement. Insurance policies for fire or casualty are not to be transferred, and the Agency will cancel its policies after the Closing. The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place when the Conditions Precedent for all parties as set forth in Section 208 have been satisfied. Escrow Agent is instructed to release escrow closing statements to the respective parties.

b. Upon delivery to the Escrow Agent of this Agreement, the Reciprocal Parking and Access Agreement, Agency Deed of Trust, Memorandum of Agreement and the Grant Deed, fully executed by the applicable parties, the Escrow Agent shall record the Grant Deed, the Memorandum of Agreement, the Reciprocal Parking and Access Agreement, and the Agency Deed of Trust (as well as any instruments to be recorded by the Escrow Agent in connection with the Construction Loan and any other mortgage financing described in the Method of Financing) in accordance with these escrow instructions, provided that title to the Site can be vested in the Developer in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix, and cancel any transfer stamps required by law.

c. The Developer shall pay in escrow to the Escrow Agent with the following fees, charges and costs promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for the conveyance of the Site:

1. One-half of the Escrow Agent's fees;
2. The premium cost for the title insurance policy to be paid by the Developer as set forth in Section 210 of this Agreement;
3. Cost of drawing the deed;
4. Recording fees;

5. Notary fees;
6. Any State, County, or City documentary stamps or transfer tax;
7. The costs to perform any environmental surveys on the Site, as requested by Developer;
8. Ad valorem taxes and assessments levied or imposed for any period commencing after conveyance of title or possession of the Site to the Developer shall be paid by the Developer; and
9. One-half of the costs to record or file any other documents required by this Agreement.

d. The Agency shall pay in escrow to the Escrow Agent the following fees, charges, and costs promptly after the Escrow Agent has notified the Agency of the amount of such fees, charges, and costs, but not earlier than ten (10) days prior to the scheduled date for the conveyance of the Site:

1. One-half of the Escrow Agent's fees;
2. The premium for the title insurance policy to be paid by the Agency as set forth in Section 210 of this Agreement;
3. Costs necessary to place the title to the Site in the condition for conveyance required by the provisions of this Agreement;
4. Ad valorem taxes and assessments, if any, upon the Site or upon this Agreement or any rights under this Agreement prior to the conveyance of title or possession; and
5. One-half of the costs to record or file any other documents required by this Agreement.

e. The Agency shall timely and properly execute, acknowledge and deliver the Grant Deed conveying to the Developer ~~insurable~~ title to the Site in accordance with the requirements of this Agreement, and deliver the executed and acknowledged Memorandum of Agreement, together with an estoppel certificate certifying that the Developer has completed all acts necessary to entitle the Developer to such conveyance, if such be the fact.

f. The Escrow Agent is instructed and authorized to:

1. Pay, and charge the Agency and the Developer, respectively, for any fees, charges and costs payable under this Section 203 of this Agreement. Before such payments are made, the Escrow Agent shall notify the Agency and the Developer of the fees, charges and costs necessary to clear title and close the escrow.

2. Disburse funds and deliver and record the Grant Deed, the Memorandum of Agreement, the Agency Deed of Trust, the Reciprocal Parking and Access Agreement, Site CC&R's and other documents to the entitled parties when the conditions of this escrow have been fulfilled by the Agency and the Developer. The Grant Deed shall not be recorded unless and until the Escrow Agent is also prepared to record the Memorandum of Agreement and the Agency Deed of Trust, the Title Company is committed to issue the Title Insurance Policies, and all Conditions Precedent to this Agreement have been fulfilled or waived.

3. Record any instruments delivered through this escrow if necessary or proper to vest title in the Developer in accordance with the terms and provisions of this Agreement.

4. Do such other actions as necessary, including obtaining the Title Policy, to fulfill its obligations with respect to the City and Agency Parcels under this Agreement.

5. Within the discretion of the Escrow Agent and, if necessary, direct the Agency and the Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder. Agency, and Developer agree to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as may be required by the Escrow Agent, on the form to be supplied by the Escrow Agent.

6. Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

g. All funds received in this escrow shall be deposited by the Escrow Agent in a general escrow account with any state or national bank doing business in the State of California and reasonably approved by the Developer and the Agency, and may be combined in such with other escrow funds of the Escrow Agent. All disbursements shall be made by check from such account.

h. Closing Procedure. The Escrow Agent shall close the Escrow as follows:

(1) Record the Grant Deed executed and notarized in the form of Attachment No. 4 attached hereto and any applicable CC&R's with instructions for the Recorder of Imperial County, California to deliver them to the appropriate party;

(2) Record the Memorandum of Agreement, CC&R's, and the Reciprocal Parking and Access Agreement executed and notarized in the form of the Attachments 5, 7, and 8 hereto with instruction for the Recorder of Imperial County, California to deliver such recorded documents to the Agency;

(3) Instruct the Title Company to deliver the Owner's Title Insurance Policy to the Developer, the Agency's Title Policy to the Agency and the Lenders' Title Insurance Policies to the Permitted Mortgagees;

(4) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(5) Deliver the FIRPTA Certificate, if any, to Developer;

(6) Forward to the Developer and the Agency a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon; and

(7) Record documents requested by the Developer subsequent to the recordation of the Grant Deed, CC&R's and the Memorandum of Agreement.

Escrow Agent agrees that recordation of the Grant Deed shall irrevocably commit Escrow Agent, on behalf of Title Company, to issue the Title Policies in Accordance with this Agreement.

i. Except as provided in Section 202.c, if this Escrow is not in condition to close on or before the time for conveyance set forth in the Schedule of Performance, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, demand the return of its money, papers or documents from the Escrow Agent. No demand for return shall be recognized until 15 days after the Escrow Agent (or the party making such demand) shall have mailed copies of such demand to the other party or parties at the address of its principal place of business. Objections, if any, shall be raised by written notice to the Escrow Agent and to the other party within the 15-day period, in which the Escrow Agent is authorized to hold all money, papers and documents with respect to the Site until instructed by a mutual agreement of the parties or, upon failure, by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible.

j. If objections are raised as above provided for, the Escrow Agent shall not be obligated to return any such money, papers, or documents except upon the written instructions of both the Agency and the Developer, or until the party entitled has been determined by a final decision of a court of competent jurisdiction. If no such objections are made within such 15-day period the Escrow Agent shall immediately return the demanded money, papers, or documents.

k. The parties understand they may be required to execute additional standard form escrow instructions required by the Escrow Agent ("General Instructions"). In the event of a conflict between this Agreement and any such General Instructions, this Agreement shall control. The parties agree, however, that they will refuse to sign General Instructions which (1) purport to relieve the Escrow Agent of liability or negligence of intentional wrong-doing; (2) excuse the Escrow Agent from strict compliance with each and all of the provisions of this document and the General Instructions; or (3) purport to authorize the Escrow Agent to follow the instructions or directive of any person not a direct signatory party to this Agreement. Any amendment to the

escrow instructions shall be in writing and signed by both the Agency and the Developer. At the time of any amendment the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

1. All communications from the Escrow Agent to the Agency or the Developer shall be directed to the addresses set forth in Sections 105 and 106 of this Agreement, and in the manner set forth in Section 601 of this Agreement for notices between the parties.

m. Prorations

(1.) General. Rentals, revenues and other income, if any, for the Site, and operating expenses, if any, affecting the Site shall be prorated as of 11:59 p.m. on the day preceding the Close of Escrow. For purposes of calculating prorations, Agency shall be deemed to be in title to the Site, and therefore, entitled to the income and responsible for the expenses, for the entire day upon which Close of Escrow occurs.

(2.) Taxes and Assessments. All non-delinquent real estate taxes on the Site shall be prorated as of the Close of Escrow based on the actual current tax bill, but if such tax bill has not yet been received by Agency by the Close of Escrow then current year's taxes shall be deemed to be one hundred two percent (102%) of the amount of the previous year's tax bill, adjusted in accordance with paragraph 4 below. All delinquent taxes and assessments, if any, on the Site shall be paid at the Close of Escrow by Agency.

(3.) Operating Expenses. Any other expenses incurred in operating the Site that Agency customarily pays, and any other costs incurred in the ordinary course of business or the management and operation of the Site shall be prorated on an accrual basis. Agency shall pay all such expenses that accrue prior to the Close of Escrow and Developer shall pay all such expenses accruing on the Close of Escrow and thereafter.

(4.) Method of Proration. All prorations shall be made in accordance with customary practice in Imperial County, except as expressly provided in this Agreement. Such prorations, if and to the extent known and agreed upon as of the close of Escrow, shall be paid into Escrow by the respective parties. Any such prorations not determined or not agreed upon as of the Close of Escrow shall be paid by Agency to Developer, or by Developer to Agency, as the case may be, in cash as soon as practical following the Close of Escrow. A copy of the schedule of prorations as agreed upon by Agency and Developer shall be delivered to Escrow Agent at least three (3) business days prior to the Closing Date.

n. Agency and Developer shall each pay their legal and professional fees and fees of other consultants incurred by Agency and Developer, respectively.

204. Conveyance of Title and Delivery of Possession

a. Subject to any mutually agreed upon extension of time, the Agency shall convey title to the Site to the Developer on or before the scheduled Closing Date (so long as all Conditions

Precedent have been satisfied), or such later date mutually agreed to in writing by the Agency and the Developer and communicated in writing to the Escrow Agent.

b. Except as otherwise provided in this Agreement, possession of the Site shall be delivered to the Developer at the Close of Escrow. The Developer shall accept title and possession to the Site upon the Close of Escrow.

205. Form of Deed

The Agency shall convey to the Developer title to the Site in the condition provided in Section 206 of this Agreement by Grant Deed in the form of Attachment No. 4. The Grant Deed shall contain covenants necessary or desirable to carry out this Agreement..

206. Condition of Title

Subject to Sections 201 and 205 of this Agreement, the Agency shall convey to the Developer fee title to the site free and clear of all liens, encumbrances, assessments, easements, leases and taxes (Title Exceptions); except (i) any Title Exceptions applicable to the Parcels that exist in items 1-10 in Attachment No. 9; (ii) those which are set forth in the Grant Deed and those which are set forth in the Memorandum of Agreement, substantially in the form attached and incorporated as Attachment No. 7, ; and (iii) those which are accepted in writing by the Developer (collectively, the "Approved Title Conditions").

207. Time and Place for Delivery of Deed

Subject to any mutually agreed upon extension of time, the Agency shall deposit the Grant Deed and the Memorandum of Agreement and any other documents to be recorded with this transaction with the Escrow Agent on or before the Scheduled Closing Date and the Escrow Agent shall forward a copy to the Title Insurance Company to review and comment prior to Closing Date providing the necessary time for Agency to remedy any conditions unacceptable to the Title Insurance Company.

208. Conditions Precedent to Close of Escrow

The Close of Escrow and the obligations of the Agency and Developer hereunder are subject to the satisfaction prior to the Close of Escrow (unless otherwise provided), of the following conditions ("Conditions Precedent"), and the obligations of the parties with respect to such conditions are as follows:

a. Parcel Split. The Agency shall have secured the recordation of the final Parcel Map No. 059-010-042 at the Office of the County Recorder of the County of Imperial.

b. Title. Agency shall have obtained title to the Site, free and clear of any and all encumbrances, except the Approved Title Conditions.

c. The Fourth Amendment to Lease by and between the Community Redevelopment Agency of the City of Calexico and the Metropolitan Theatres Corporation shall have been executed and recorded.

d. The Reciprocal Parking and Access Agreement between Calexico M.O.B., LLC, the Community Redevelopment Agency of the City of Calexico, and Metropolitan Theatres Corporation shall have been executed.

e. Representations, Warranties and Covenants

1. Developer shall have duly performed each and every agreement to be performed by Developer hereunder and Developer's representations, warranties and covenants set forth in this Agreement shall be true and correct as of the date of the Close of Escrow.

2. Agency shall have duly performed each and every agreement to be performed by Agency hereunder and Agency's representations, warranties and covenants set forth in this Agreement shall be true and correct as of the date of the close of Escrow.

f. Deliveries.

1. Developer shall have delivered the items to be delivered by Developer, when and as required in this Agreement.

2. Agency shall have delivered the items to be delivered by Agency, when and as required by this Agreement.

g. Conditions. As of the Close of Escrow, all of the conditions set forth in the Method of Financing shall have been satisfied. Developer shall have provided the evidence of financing to the Agency in accordance with Section 315 hereof and the Agency's Executive Director or his designee has approved such proof of financing. Developer must obtain the appropriate environmental clearance under the California Environmental Quality Act for the Development of the Site

h. Title Insurance. As of Close of Escrow, the Title Company shall be committed to issue the Title Insurance Policies.

i. Failure of Conditions Precedent to Close of Escrow. In the event any of the Conditions Precedent to the Close of Escrow are not timely satisfied or waived, for a reason other than the default of Agency or Developer, the following shall apply:

1. Either party shall have the right to terminate this Agreement, the Escrow and the rights and obligations of Agency and Developer hereunder, except as otherwise provided herein; and

2. Except as provided in Section 202.c, Escrow Agent is instructed to promptly return to Developer and Agency all funds, if any, and documents deposited by them,

respectively, into Escrow which are held by Escrow Agent on the date of said termination in accordance with this Agreement (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under paragraph k below); and

3. Neither party shall have any further rights or obligations hereunder except as otherwise provided in this Agreement.

k. **Cancellation Fees and Expenses.** In the event this Escrow terminates because of the non-satisfaction of any Condition Precedent for a reason other than the default of Agency or Developer under this Agreement, the cancellation charges, if any, required to be paid by and to Escrow Agent and the Title Company shall be borne according to Sections 203 c and d. In the event either party terminates this Agreement pursuant to any provision of this Agreement, the cancellation charges, if any, required to be paid by and to Escrow Agent and the Title Company shall be borne by the party who has terminated this Agreement, and all other charges shall be borne by the party incurring same.

209. Closing.

The Escrow shall close (the "Closing") within sixty (60) days of the parties' satisfaction of all of the Conditions Precedent as set forth in Section 208 hereof, but in no event later than 180 days from the date that Escrow is opened (the "Outside Date"), unless an extension is mutually agreed to by all parties. The "Closing" shall mean the time and day the Deeds are filed for recordation with the Imperial County Recorder.

210. Title Insurance.

Concurrent with recordation of the Grant Deed and the Memorandum of Agreement, the Title Company shall provide and deliver the Title Insurance Policies to the respective insured parties. Agency shall be obligated only to pay the title insurance premium for the Owner's Title Insurance Policy to the extent of a standard coverage CLTA title insurance policy on the Site in the Amount of the Purchase Price. The Developer shall be responsible for paying the premium for the following: (a) any additional title insurance, including any extended coverage or special endorsements which it requests; (b) the Lenders' Title Insurance Policies; and (c) the Agency's Title Insurance Policy.

211. Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Site, and taxes upon this Agreement or any rights pursuant to the Agreement levied, assessed or imposed for any period, commencing prior to conveyance of title or possession of the Site to the Developer, shall be borne by the Agency. All ad valorem taxes and assessments levied or imposed for any period commencing after conveyance of title or possession of the Site to the Developer shall be paid by the Developer.

212. Occupants of the Site.

The Agency agrees that title to the Site shall be conveyed free of any possession or right of possession except that of the Developer, unless waived by the Developer in writing previous to the Closing.

213. Land Use Requirements

It is the responsibility of the Developer, without cost to Agency, to ensure that zoning of the Site and all applicable City land use requirements will be, at the Closing, such as to permit development of the Site and construction of the Improvements and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement. Developer shall obtain all entitlements, approvals and permits necessary for the construction of Improvements in accordance with the Schedule of Performance. Nothing contained in this Agreement shall be deemed to entitle Developer to any City of Calexico permit or other City approval necessary for the development of the Site, or waive any applicable City requirements. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by the City of Calexico in connection with approval of the development described in this Agreement, (c) guarantee to Developer or any other party any profits from the Development of the Site, or (d) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code section 65864. Without cost to Agency, Agency shall provide appropriate technical assistance to Developer in connection with Developer's obtaining all necessary entitlements, permits and approvals for the construction of the Improvements.

214. Condition of the Site.

a. The Agency shall provide to the Developer a copy of the most recent Phase I environmental study for the Site within 15 days of the Opening of Escrow. The provision of the Phase I environmental study for the Site shall in no way be a representation of the Agency. The Developer is advised by the Agency that it should independently verify the accuracy thereof. The Site and all existing improvements shall be conveyed in an "as is" condition, with no warranty, express or implied by the Agency as to the condition of the soil (or water), its geology, or the presence of known or unknown faults or as to the condition of the improvements. It shall be the sole responsibility of the Developer, at the Developer's expense, to investigate and determine the soil (and water) condition of the Site (including improvements) and the suitability of the Site (including improvements) for the demolition of the existing improvements and the development to be constructed by the Developer pursuant to this Agreement. Upon the Close of Escrow, Developer shall be deemed to waive any contingency regarding the soil (or water) condition of the Site (including improvements), or any part, or its suitability for the purposes for which the Site is to be put pursuant to this Agreement.

b. From and after the Closing, the Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all governmental requirements with respect to Hazardous Materials. In addition, the Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially

reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials in, on or under the Site.

c. After the Closing, the Developer shall notify the Agency, and provide to the Agency a copy or copies, of all notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any governmental requirement relating to Hazardous Materials and underground tanks. The Developer shall report to the Agency, as soon as possible after each incident, any known Hazardous Materials release or known circumstances which would potentially lead to such a release.

215. Indemnity.

a. As a material part of the consideration for this Agreement, and to the maximum extent permitted by law, Developer shall defend, indemnify, and hold harmless the City and Agency, their agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City and/or Agency or their agents, officers, or employees, relating to the approval of this Agreement or the City's and Agency's obligations under this Agreement including, but not limited to, any action to attack, set aside, void, challenge, or annul this Agreement and any environmental document or decision connected to the approval of this Agreement. Developer shall enter into a Joint Defense Agreement to memorialize this indemnification obligation and the method and terms of such indemnification in a form acceptable to the Agency Executive Director and Agency Counsel within two weeks of commencement of any legal action with respect to this Agreement.

b. From and after the Closing, the Developer agrees to indemnify, defend and hold the Agency and the City, and their respective officers, employees, agents, representatives and volunteers, harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees, court and litigation costs and fees of expert witnesses), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site, arising or occurring after the Closing Date or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from the Site. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. This indemnity shall not include any Claim based solely upon the negligent or intentional acts or omissions of the Agency or the City, or any of their officers, employees or agents.

216. Insurance.

a. Insurance Policies.

(1.) At all times prior to Completion, Developer shall maintain in effect and deliver to Agency duplicate originals or appropriate certificates of the following insurance policies:

- i. Fire Policies: Developer shall maintain or cause to be maintained a policy or policies of insurance against loss or damage to the Property and the Improvements thereon and all property of an insurable nature located upon the Property, resulting from fire, lightning vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in special causes of loss property coverage form policies. Such insurance shall be maintained in an amount not less than one hundred percent of the full insurable value of the Improvements on the Property, as defined below.
- ii. Liability Insurance: Developer shall maintain or cause to be maintained public liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of the Developer on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Developer or its tenants, or any person acting for Developer, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Developer or its tenants, or any person acting for Developer, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Agency against incurring any legal costs in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the Term in the following amounts: commercial general liability in a general aggregate amount of not less than \$2 million, and not less than \$2 million General Aggregate, \$2 million Products and Completed Operations Aggregate, and \$2 million Each Occurrence. Developer shall deliver to Agency a Certificate of Insurance evidencing such insurance coverage prior to the Closing of Escrow. Developer agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Developer may be held responsible for the indemnification of Agency or the payment of damages to persons or property resulting from Developer's activities, activities of its tenants or the activities of any other person or persons for which Developer is otherwise responsible.

iii. Automobile Insurance: Developer shall maintain or cause to be maintained automobile insurance, maintained in full force and effect during the Term in an amount of not less than \$2 million per accident.

iv. Workers' Compensation Insurance: Developer shall maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Developer in connection with the Site and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Developer. Notwithstanding the foregoing, Developer may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Lessee shall deliver to Agency evidence that such self-insurance has been approved by the appropriate State authorities.

(2.) All policies or certificates of insurance shall provide that such policies shall not be cancelled, reduced in coverage or limited in any manner without at least thirty days prior written notice to Agency. All fire and liability insurance policies (not automobile and workers' compensation) shall name the Agency and Developer as insureds, additional insureds, or loss payable parties as their interests may appear.

(3.) The term "full insurable value" as used in this paragraph (3), shall mean the cost (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of providing similar Improvements of equal size and providing the same habitability as the Improvements immediately before such casualty or other loss, but using readily-available contemporary components, including the cost of construction, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Developer shall cause the full insurable value to be determined from time to time by appraisal by the insurer, by agreement between Developer and Agency or by an appraiser mutually acceptable to Agency and Developer, not less often than once every three years.

(4.) All insurance provided under this Section 216 shall name as additional insureds the following:

"The City of Calexico; the Redevelopment Agency of the City of Calexico, and their officers, employees, contractors and agents."

b. Developer agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Developer agrees to submit binders or certificates evidencing

such insurance to Agency in accordance with the Schedule of Performance. Within thirty days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Agency. All insurance herein provided under this paragraph b shall be provided by insurers licensed to do business in the State of California and rated A-VII or better.

c. If Developer fails or refuses to procure or maintain insurance as required by this Agreement, Agency shall have the right, at Agency's election, and upon ten days prior notice to Developer, to procure and maintain such insurance. The premiums paid by Agency shall be treated as a loan, due from Developer, to be paid on the first day of the month following the date on which the premiums were paid. Agency shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

d. The requirements of this Section 216 shall not apply following Completion as evidenced by the issuance of a Certificate of Completion.

3. DEVELOPMENT OF THE SITE

301. Scope of Development

After the Close of the Escrow, the Developer shall develop the Improvements upon the Site, in accordance with 1) the Scope of Development 2) all entitlements and approvals from the City 3) the time periods set forth in the Schedule of Performance and 4) the plans, drawings and documents submitted by Developer and reasonably approved by City and Agency as set forth herein. The Developer Improvements shall generally consist of a two-story medical facility as more fully described in the Scope of Development attached to this Agreement as Attachment No. 3.

302. Basic Concept and Schematic Drawings.

a. The Developer shall prepare and submit Basic Concept and Schematic Drawings and related documents for the development of the Site to the Agency for review and written approval within the time established in the Schedule of Performance. Basic Concept and Schematic Drawings shall include a site plan, elevations and sections of the improvements as they are to be developed and constructed on the Site.

b. The Site shall be developed as established in the Basic Concept and Schematic Drawings and related documents except as changes may be mutually agreed upon between the Developer and the Agency Executive Director or designee. Any such changes shall be within the limitations of the Scope of Development.

303. Landscaping and Grading Plans.

a. The Developer shall prepare and submit to the Agency for its approval preliminary and final landscaping and preliminary and finished grading plans for the Site. These plans shall

be prepared and submitted within the times established in the Schedule of Performance. The landscaping plans shall include a lighting program which highlights the design components of the development, including, but not limited to, building facades, architectural detail, building interiors and landscaping.

b. The landscaping plans shall be prepared by a professional landscape architect and the grading plans shall be prepared by a licensed civil engineer. Such landscape architect and/or civil engineer may be the same firm as the Developer's architect. Within the times established in the Schedule of Performance, the Developer shall submit to the Agency for approval the name and qualifications of its architect, landscape architect and civil engineer.

304. Construction Drawings and Related Documents for the Site

a. The Developer shall prepare and submit construction drawings and related documents (collectively called the "Drawings") to the Agency for review (including but not limited to architectural review), and written approval in the times established in the Schedule of Performance (Attachment No. 2). Such construction drawings and related documents shall be submitted as 50% and Final Construction Drawings. "Final Construction Drawings" is defined for purpose of this Agreement as those in sufficient detail to obtain a building permit.

b. Approval of progressively more detailed drawings and specifications will be granted by the Agency Executive Director or designee if developed, in the sole discretion of the Agency Executive Director or designee, as a logical evolution of drawings or specifications previously approved.

c. During the preparation of all drawings and plans the Agency Executive Director or designee and the Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by the Agency Executive Director or designee. The Agency Executive Director or designee and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the Agency can receive prompt and speedy consideration.

305. Agency Approval of Plans, Drawings and Related Documents

a. Subject to the norms of this Agreement, the Agency shall have the right of review (including without limitation architectural review) of all plans and submissions, including any proposed changes. The Agency shall approve or disapprove the plans, drawings and related documents referred to in Sections 302, 303 and 304 of this Agreement within the times established in the Schedule of Performance. Any disapproval shall state in writing the reasons for disapproval and the changes which the Agency Executive Director or designee requests to be made. Such reasons and such changes must be consistent with the Scope of Development and any items previously approved pursuant to this Agreement. The Developer, upon receipt of a disapproval based upon powers reserved by the Agency hereunder shall revise the plans, drawings and related documents, and shall resubmit to the Agency Executive Director or designee as soon as possible after receipt of the notice of disapproval.

b. If the Developer desires to make any change in the Final Construction Drawings after their approval, such proposed change shall be submitted to the Agency Executive Director or designee for approval. Approval of a change in the Final Construction Drawings shall be in the sole discretion of the Agency Executive Director or designee.

306. Cost of Construction

The cost of demolishing any improvements existing on the Site as of the Close of Escrow and developing the Site and constructing the Improvements, including any offsite or onsite improvements required by the City in connection therewith, shall be the responsibility of the Developer, subject to the terms of this Agreement, including the Method of Financing.

307. Schedule of Performance

a. Each party to this Agreement shall perform the obligations to be performed by such party pursuant to this Agreement within the respective times provided in the Schedule of Performance, and if no such time is provided, within a reasonable time. The Schedule of Performance shall be subject to amendment from time to time upon the mutual written agreement of the Developer and the Agency's Executive Director and the Agency's Executive Director is authorized to make such revisions as he deems reasonably necessary.

b. After the Closing, the Developer shall promptly begin and diligently complete the construction of the Improvements and the Development as provided in the Scope of Development. The Developer shall begin and complete all construction and development within the times specified in the Schedule of Performance with such reasonable extensions of said dates as may be granted by the Agency.

c. During periods of construction, the Developer shall submit to the Agency a written report of the Progress of construction when and as reasonably requested by the Agency, but not more frequently than once every quarter. The report shall be in such form and detail as may be reasonably required by the Agency and shall include a reasonable number of construction photographs (if requested) taken since the last report by the Developer.

308. Nondiscrimination and Equal Opportunity

Developer, for itself, its successors and its assigns, certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Sections 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Sections 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, California Government Code Sections 12900, et seq., the California Equal Pay Law, California Labor Code Sections 1197.5, California Government Code

Section 11135, the Americans with Disabilities Act, 42 U.S.C. Sections 12101, et seq., and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. The Developer shall allow representatives of the City and Agency access to its employment records related to this Agreement during regular business hours to verify compliance with these provisions when so requested by the City and/or Agency.

309. RESERVED.

310. City and Other Governmental Agency Permits

Before commencement of demolition, construction or development of any buildings, structures or other work of improvement upon any portion of the Site, the Developer shall, at its own expense, obtain or cause to be obtained, any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work.

311. Rights of Access

Representatives of the Agency and the City shall have the right of access to the Site without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency and will comply with all safety rules.

312. Disclaimer of Responsibility by Agency

The Agency neither undertakes nor assumes nor will have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the development or construction of the improvements on the Site, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Site, any person furnishing the same, or otherwise. Developer and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer or to any third party by the Agency in connection with such matter is for the public purpose of redeveloping the Site, and neither Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. The Agency shall not be responsible for any of the work of demolition, construction, improvement or development of the Site.

313. Taxes, Assessments, Encumbrances and Liens

Developer shall pay when due all real estate taxes and assessments assessed and levied on or against the Site subsequent to the Close of Escrow. Prior to completion, Developer shall not place, or allow to be placed, on title to the Site or any portion, any mortgage, trust deed,

encumbrance or lien not authorized by this Agreement. In addition, Developer shall remove, or shall have removed, any levy or attachment made on title to the Site (or any portion) or shall assure the satisfaction within a reasonable time but in any event prior to a sale of the Site. Nothing contained in this Agreement shall be deemed to prohibit the Developer from applying for any tax exemption for which Developer or the project may be eligible, or from contesting the validity or amount of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect. The covenants of the Developer set forth in this Section 313 shall remain in effect only until the issuance of the Certificate of Completion.

314. Prohibition against Transfer

a. Prior to Completion, the Developer shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any right, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Site or the improvements, without prior written approval of the Agency. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site, nor shall it prohibit Permitted Transfers.

b. Except as permitted by paragraph a, in the event the Developer does assign this Agreement or any of the rights, or does sell, transfer, convey or assign the Site or the buildings or structures prior to Completion without the approval of the Agency, subject to the notice and cure provisions of Section 501, the Agency shall have the right to terminate this Agreement and proceed with any rights and remedies.

c. In the absence of a specific written agreement by the Agency, and except as otherwise provided in this Agreement, no such sale, transfer, conveyance or assignment of this Agreement or Developer's interest in the Site (or any portion), or approval by the Agency of any such sale, transfer, conveyance or assignment, shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

315. Method of Financing of the Improvements.

a. The Project may be financed with a combination of sources of financing as provided herein in this Section 315. As required by the Schedule of Performance, the Developer shall submit to the Agency for Agency approval evidence satisfactory to the Agency that the Developer has obtained the financing necessary for the development of the Site in accordance with this Agreement. Such evidence of financing shall include the following:

1) In the event Developer intends to use a construction loan for the Improvements, a copy of the commitment or commitments obtained by the Developer for the Construction Loan, and any other commitments to finance the construction of the Improvements, certified by the Developer to be a true and correct copy or copies thereof;

2) A copy of the contract between the Developer and the general contractor, if any, or major subcontractors for the construction of the Improvements, certified by the Developer to be a true and correct copy thereof;

3) In the event Developer intends to use a construction loan for the Improvements, a copy of substantially complete Construction Loan Documents (e.g., notes, trust deeds, indentures, loan agreements, etc.);

4) Documentation acceptable to the Agency Executive Director of other sources of capital sufficient to demonstrate that the Developer has adequate financial resources committed to provide the amount of Developer Improvements.

b. The Agency shall approve or disapprove such evidence of financing within the time established in the Schedule of Performance. Any approved financing will be referred to as a Permitted Construction Loan. Such approval shall not be unreasonably withheld. If the Agency shall disapprove any such evidence of financing, the Agency shall do so by written notice to the Developer stating the reasons for such disapproval. Failure of the Agency to disapprove and provide written notice to Developer within the time established in the Schedule of Performance shall be deemed approval.

316. No Encumbrances except Permitted Mortgages.

a. On or after the Closing, Developer may encumber the Site in accordance with this Section 316 ("Permitted Mortgage"). Mortgages, deeds of trust and sales and leases-back are permitted before completion of the construction of the Improvements with the Agency's prior written approval, which shall not be unreasonably withheld or delayed, for the purpose of securing loans of funds to be used for financing the construction of the Improvements; permanent financing; and any other purposes necessary and appropriate in connection with development under this Agreement but only for the purpose of securing loans or grants of funds to be used for financing and refinancing the construction of the Improvements, and other expenditures necessary and appropriate to develop the Site under this Agreement ("Permitted Financing Purposes"). The Developer shall notify the Agency in advance of any mortgage, deed of trust or sale and lease-back financing, if the Developer proposes to enter into the same before completion of the construction of the Improvements. Prior to Completion: (1) Developer shall not have any authority to encumber the Site for any purpose other than Permitted Financing Purposes; (2) the Developer shall notify the Agency in advance of any proposed financing; and (3) the Developer shall not enter into any mortgage, deed of trust or similar instrument encumbering the Site without the prior written approval of the Agency, which approval the Agency shall grant if it is a Permitted Mortgage.

b. In any event, the Developer shall promptly notify the Agency or any mortgage created or attached to the Site whether by voluntary act of the Developer or otherwise.

c. The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction and land development.

d. The requirements of this Section 316 shall not apply following Completion as evidenced by the issuance of a Certificate of Completion.

317. Permitted Mortgagee Not Obligated to Construct Improvements

A Permitted Mortgagee, the maker of an obligation secured by a Permitted Mortgage loan, as authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit, or authorize any such lender to devote the Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

318. Notice of Default to Permitted Mortgagees; Right of Permitted Mortgagee to Cure Defaults

Whenever the Agency shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the Improvements, the Agency shall at the same time deliver to each Permitted Mortgagee of record a copy of such notice or demand. Each such Permitted Mortgagee shall (insofar as the rights of the Agency are concerned) have the right at its option within forty-five (45) days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost of the cure or remedy to the security interest debt and lien of its security interest. If such default shall be a default which can only be remedied or cured by such lender upon obtaining possession of the Site, such Permitted Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) days after obtaining possession; provided that in the case of default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such ninety (90) day period, such Permitted Mortgagee shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity; and provided further that such Permitted Mortgagee shall not be required to remedy or cure any non-curable default of the Developer. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the Agency by written agreement reasonably satisfactory to the Agency. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 322 of this Agreement, to a Certificate of Completion.

319. Failure of Permitted Mortgagee to Complete Improvements

In any case where, following notice and an opportunity to cure as provided in this Agreement, neither Developer nor the Permitted Mortgagee has cured a default under this Agreement, a Permitted Mortgagee has not elected to construct, or if it has so elected but has not proceeded diligently with construction (including diligent efforts to obtain possession if necessary), the Agency may purchase the mortgage, deed of trust or other security interest by

payment to the Permitted Mortgagee of the amount of the unpaid debt, plus any accrued and unpaid interest and other charges properly payable under the mortgage, deed of trust, or other security interest. Furthermore, if the ownership of the Site (or portion) has vested in the Permitted Mortgagee, the Agency, if it so desires, shall be entitled to a conveyance from the Permitted Mortgagee to the Agency upon payment to the Permitted Mortgagee of an amount equal to the sum of the following:

a. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the Permitted Mortgagee (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

b. All expenses with respect to foreclosure;

c. The net expense, if any (exclusive of general overhead), incurred by the Permitted Mortgagee as a direct result of the subsequent ownership or management of the Site (or portion), such as maintenance, insurance premiums and real estate taxes;

d. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency.

320. Right of the Agency to Cure Defaults

In the event of a default or breach by the Developer of a Permitted Mortgage prior to Completion, and the Permitted Mortgagee has not commenced to complete the development, the Agency may cure the default prior to completion of any foreclosure. In any such event, the Agency shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Agency in curing the default. The Agency shall also be entitled to a lien upon the Site to the extent of such costs and disbursement. Any such lien shall be subordinate and subject to Permitted Mortgages.

321. Right of the Agency to Satisfy Other Liens on the Property after Closing

Prior to Completion and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on its interest in the Site, the Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provisions for the payment of any tax, assessment, line or charge so long as the Developer in good faith shall contest the validity or amount, and so long as such delay in payment shall not subject the Site to forfeiture or sale. In such event, the Agency shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Agency in satisfying any such liens or encumbrances. The Agency shall also be entitled to a lien upon the Site to the extent of such costs and expenses. Any such lien shall be subordinate and subject to Permitted Mortgages.

322. Certificates of Completion.

After completion of the Improvements on the Site in conformity with this Agreement, the Agency shall furnish the Developer with a Certificate of Completion in the form of Attachment No. 6 hereto. The Agency shall not unreasonably withhold such Certificate of Completion. The Certificate of Completion shall be a conclusive determination of satisfactory completion of the Improvements and the Certificate of Completion shall so state. If the Agency refuses or fails to furnish the Certificate of Completion after written request from the Developer, the Agency shall, within thirty (30) working days of such written request, provide Developer with a written statement setting forth the reasons the Agency has refused or failed to furnish the Certificate of Completion. The statement shall also contain a list of the actions the Developer must take to obtain a Certificate of Completion.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not a notice of completion as referred to in the California Civil Code, Section 3093. The Certificates of Completion provided for in this Section 322 are not to be considered as certificates of occupancy or final approval of a building permit issued by the City.

4. COVENANTS AND USE OF THE SITE

401. Covenant to Use Site In Accordance with Redevelopment Plan.

Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site or any part thereof that the Developer and such successors and assignees, shall devote the Site only to those uses specified or permitted in the Redevelopment Plan, any conditions of approval required by the City and Agency, this Agreement, including the Scope of Development, the Grant Deed and the covenants contained in this Agreement and any subsequent agreement which provides for City and/or Agency financial assistance to the development of the Site. A copy of the Redevelopment Plan has been previously delivered to Developer.

Without limiting the generality of the foregoing, Developer shall use the Site for the development, as described in the Scope of Development, for medical facilities uses until 10 years from date of occupancy permit. The foregoing covenant shall run with the land, and Developer shall record the Declaration of Conditions, Covenants and Restrictions executed and notarized in the form of Attachment No. 5 within the time set forth in the Schedule of Performance and prior to Close of Escrow.

402. Reserved.

403. Maintenance Covenants of the Site

Developer covenants and agrees for itself, its successors and assigns and any successor in interest to the Site or part thereof to maintain the Site and all improvements thereon as a medical facility and in compliance with the terms of the Scope of Development, the Redevelopment Plan

and with all applicable provisions of the City of Calexico Municipal Code and any other applicable state or federal law. The foregoing covenant shall run with the land, and Developer shall record the Declaration of Conditions, Covenants and Restrictions executed and notarized in the form of Attachment No. 5 within the time set forth in the Schedule of Performance and prior to Close of Escrow.

404. Nondiscrimination Covenant

Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site or any part thereof that there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Developer itself, or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenant shall run with the land, and Developer shall record the Declaration of Conditions, Covenants and Restrictions executed and notarized in the form of Attachment No. 5 within the time set forth in the Schedule of Performance and prior to Close of Escrow.

405. Form of Nondiscrimination and Nonsegregation Clauses

Developer shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, handicap, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government

Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

c. In contracts relating to the sale, transfer or leasing of the Site or any interest therein: “There shall be no discrimination against or segregation of, any person, or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the premises.”

406. Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the Developer and any successor in interest to the Site or any part, together with any property acquired by Developer pursuant to this Agreement, for the benefit and in favor of the Agency and City, their successors and assigns.

407. Effect of Violation of the Terms and Provisions of this Agreement

The City and Agency are deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in their own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether the City or Agency has been, remains or is an owner of any land or interest therein in the Site. The City and Agency shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. The covenants contained in this Agreement shall remain in effect for the term of the Redevelopment Plan that is until 2043; provided however, that notwithstanding the foregoing, the covenants set forth in Sections 401 and 402 hereof shall remain in effect for the period of time set forth therein and the covenants against discrimination, as set forth in Section 403 hereof, shall remain in effect in perpetuity.

5. DEFAULTS, REMEDIES AND TERMINATION

501. Defaults – General

a. Subject to the extensions of time set forth in Section 602, failure or delay by either party to perform any term, covenant or provision of this Agreement constitutes a Default under this Agreement. The party who fails or delays must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The injured party shall give written notice of Default to the party in Default specifying the Default complained of by the injured party ("Default Notice"). Failure or delay in giving such Default Notice shall not constitute a waiver of any Default, nor shall it change the time of Default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

c. If a monetary event of Default occurs, prior to exercising any remedies pursuant to this Agreement, the injured party shall give the party in Default written notice of such Default. The party in Default shall have a period of ten (10) calendar days after such notice is received or deemed received within which to cure the Default prior to exercise of remedies by the injured party.

d. If a non-monetary event of Default occurs, prior to exercising any remedies pursuant to the Agreement, the injured party shall give the party in Default notice of such Default. If the Default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in Default shall have such period to effect a cure prior to exercise of remedies by the injured party. If the Default is such that it is not reasonably capable of being cured within thirty (30) days, and the party in Default (1) initiates corrective action within said period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in Default shall have such additional time as is reasonably necessary to cure the Default prior to exercise of any remedies by the injured party. In no event shall the injured party be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a Default or the Default is not cured within ninety (90) days after the first Default Notice is given.

e. Any Default Notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any Default Notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any Default Notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt.

502. Institution of Legal Actions

In addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Imperial, State of California, in any other appropriate court of that County, or in the United States District Court for the Southern District of California.

503. Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

504. Acceptance of Service of Process

a. In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director of the Agency, or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon the Developer (or upon an officer of the Developer) and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

505. Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

506. Damages

Subject to the notice and cure provisions of Section 501, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such Default upon the defaulting party. If the Default is not cured within the time provided in Section 501, the defaulting party shall be liable to the non-defaulting party for any damages caused by such Default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such Default. In no event shall the Agency be held responsible to pay any hard or soft costs expended by Developer related to the design, construction, or development of the Site.

507. Specific Performance

Subject to the notice and cure provisions of Section 501, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of

such Default upon the defaulting party. If the Default is not cured within the time provided in Section 501, the non-defaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such Default.

508. Termination by the Developer

Prior to the Closing, subject to the notice and cure provisions of Section 501, Developer shall have the right to terminate this Agreement, by providing written notice to the Agency, in the event of any of the following:

- a. Agency fails to tender conveyance of the Site as required by this Agreement; or
- b. There is a failure of any Conditions Precedent to the Close of Escrow that is for the benefit of Developer.

509. Termination by Agency

a. Prior to the Closing, subject to the notice and cure provisions of Section 501, Agency shall have the right to terminate this Agreement, by providing written notice to the Developer, in the event of any uncured Default by Developer or failure of any Condition Precedent to the close of Escrow which is in the control of Developer, including but not limited to the following:

1. the Developer fails to submit to the Agency the evidence of financing commitments as required by this Agreement or fails to satisfy any other Condition Precedent to the Close of Escrow within the time established in the Schedule of Performance; or

2. the Developer (or any successor in interest) assigns or attempts to assign the Agreement or any right, or transfers the Site (or any portion or interest) except as permitted by this Agreement; or

3. there is a change in the ownership of the Developer, or with respect to the identity of the parties in control of Developer, contrary to the provisions of this Agreement; or

4. the Developer fails to submit any of the plans, drawings and related documents required by this Agreement by the respective dates provided in this Agreement therefor; or

5. the Developer fails to take title or possession under a tender of conveyance by the Agency pursuant to this Agreement; or

6. the Developer otherwise materially breaches this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement.

b. After the Close of Escrow but before Completion, Agency shall have the additional right to terminate this Agreement in the event any of the following defaults shall occur:

1. Subject to force majeure delay, Developer fails to commence construction of the improvements as required by this Agreement for a period of ninety (90) days after the Close of Escrow; or

2. Subject to force majeure delay, Developer abandons or substantially suspends construction of the improvements for a period of ninety (90) days after written notice of such abandonment or suspension has been given by the Agency to the Developer; or

3. Developer assigns or attempts to assign this Agreement, or any rights, or transfer, or suffer any involuntary transfer of the Site, or any part in violation of this Agreement, and such breach is not cured within thirty (30) days after the date of written notice; or

4. Developer otherwise materially breaches this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement.

c. The rights established in paragraph b above shall not apply after Completion.

d. In the event the Agency terminates this Agreement pursuant to paragraph b of this Section 509, the Agency shall retain its rights under Section 510, notwithstanding the termination of this Agreement.

510. Right of Reentry

a. Subject to the notice and cure provisions of Section 501 and subject to any Permitted Mortgage, in the event of an uncured Default described in Section 509.b, the Agency shall have the additional right, at its option, to reenter and take possession of the Site (or any portion) with all improvements thereon, and to terminate and revest in the Agency the estate previously conveyed to the Developer.

b. Such right to reenter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit, and the Agency's rights shall be subject and subordinate to any rights or interests of any Mortgagee of a Permitted Mortgage loan.

c. The Grant Deed shall contain appropriate reference and provisions to give effect to the Agency's right, as set forth in this Section 510 under specified circumstances prior to Completion, to reenter and take possession of the Site, or any part, with all improvements, and to terminate and revest in the Agency the estate conveyed to the Developer.

d. Upon the revesting in the Agency of title to the Site, or any part, as provided in this Section 510, the Agency shall, pursuant to its responsibilities under state law, use its best efforts to resell the Site, or any part, as soon and in such manner as the Agency shall find feasible and consistent with the objectives of the Community Redevelopment law and the Redevelopment Plan to a qualified and responsible party or parties (as determined by the Agency), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to the Agency and in accordance with the uses specified for

the Site, or any party, in the Redevelopment Plan. Upon such resale of the Site, or any part, the proceeds of the resale shall be applied:

1. First, repayment in full of the outstanding balance of the Permitted Mortgage loan;

2. Second, to reimburse the Agency on its own behalf or on behalf of the City of all costs and expenses incurred by the Agency, including salaries of personnel engaged in such action, in connection with the recapture, management and resale of the Site, or any part (but less any income derived by the Agency from the sale of the Site, or any part, in connection with such management); all taxes, assessments and water and sewer charges with respect to the Site or any part (or, in the event the Site, or any part, is exempt from taxation or assessment or such charges during the period of ownership, then such taxes assessments or charges, as would have been payable if the Site, or part, were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part on the Site, or any part; and any amounts otherwise owing to the Agency by the Developer and its successor or transferee; and

3. Third, to reimburse the Developer, its successor or transferee, up to the amount equal to: (A) the sum of the Purchase Price paid to the Agency by the Developer for the Site; and (b) the costs incurred for the development of the Site, or any part, or for the construction of the agreed improvements thereon, less (c) the sum of the Permitted Mortgage loan.

- e. Any balance remaining after such reimbursements shall be retained by the Agency as its property.

- f. To the extent that the right established in this Section 510 involves a forfeiture, it must be strictly interpreted against the Agency, the party for whose benefit it is created. The rights established in this Section 510 are to be interpreted in light of the fact that the Agency will convey the Site to the Developer for development and not for speculation.

6. GENERAL PROVISIONS

601. Notices, Demands and Communications between the Parties

Any approval, disapproval, demand, document or other notice ("Notice") required or permitted under this Agreement or other communication between Agency and Developer must be in writing and shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Agency and Developer as set forth in

Sections 105 and 106 of this Agreement. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission and any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt.

602. Enforced Delay; Extension of Time of Performance

a. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: litigation challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; inability to secure necessary labor, materials or tools; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of terrorism; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather; acts or omissions of the other party; acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of the Agency which shall not excuse performance by the Agency); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform.

b. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by the Agency and the Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Improvements shall not constitute grounds of enforced delay pursuant to this Section 602.

603. Conflict of Interest

a. No member, official, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decisions relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which s/he is, directly or indirectly, interested.

b. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

604. Nonliability of Agency Officials and Employees

No member, official, agent, legal counsel or employee of Agency shall be personally liable to Developer, or any successor in interest in the event of any default or breach by Agency or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement.

605. Inspection of Books and Records

Prior to Completion, the Agency shall have the right at all reasonable times to inspect the books and records of the Developer pertaining to the Site as pertinent to the purposes of this Agreement.

606. Approvals

a. Except as otherwise expressly provided in this Agreement, approvals required of Agency or Developer in this Agreement, including the attachments, shall not be unreasonably withheld or delayed. All approvals shall be in writing. Failure by either party to approve a matter within the time provided for approval of the matter shall not be deemed a disapproval, and failure by either party to disapprove a matter within the time provided for approval of the matter shall not be deemed an approval.

b. Except as otherwise expressly provided in this Agreement, approvals required of the Agency shall be deemed granted by written approval of the Agency's Executive Director or designee. Agency agrees to provide notice to Developer of the name of the Executive Director's designee on a timely basis, and to provide updates from time to time. Notwithstanding the foregoing, the Executive Director or designee may, in his or her sole discretion, refer to the governing body of the Agency any item requiring Agency Approval; otherwise, "Agency approval" shall mean and refer to approval by the Executive Director or designee.

607. Real Estate Commissions

Neither Developer nor Agency shall be liable for any real estate commissions or brokerage fees which may arise from this Agreement. Developer and Agency each represent that it has engaged no broker, agent or finder in connection with this Agreement.

608. Construction and Interpretation of Agreement

a. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties to this Agreement acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently

review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

b. If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

c. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

d. References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments (which are incorporated by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking shall mean, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

e. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

609. Time of Essence

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

610. No Partnership

It is hereby acknowledged that the relationship between the Agency, City and the Developer is not that of a partnership or joint venture and that the Agency, City and the Developer shall not be deemed or construed for any purpose to be the agent of the other, or cause Agency to be responsible in any way for the debts or obligations of Developer, or any other party. Accordingly, except as expressly provided herein or in the Attachments hereto, the Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Site.

611. Compliance with Law

Developer agrees to comply with all the requirements now in force, or which may hereafter be in force in the future, of all municipal, county, state, and federal authorities pertaining to the Site, and the Improvements, as well as operations conducted on the Site and improvements. The judgment of any court of competent jurisdiction, or the admission of Developer or any lessee or permittee in any action or proceeding against them, or any of them, whether Agency be a party or not, that Developer, lessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between the Agency and Developer.

612. Binding Effect

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

613. No Third Party Beneficiaries

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of Agency and Developer, and not for the benefits, directly or indirectly, of any other person or entity, except as otherwise expressly provided in this Agreement.

614. Cooperation in Carrying Out Agreement

Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

615. Authority to Sign

Developer represents that the persons executing this Agreement on behalf of Developer have full authority to do so and to bind Developer to perform pursuant to the terms and conditions of this Agreement.

616. Incorporation by Reference

Each of the attachments and exhibits attached to this Agreement is incorporated into this Agreement by reference.

617. Counterparts

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single binding instrument.

618. Commencement of Agency Review Period.

The time periods set forth herein for the Agency's approval of agreements, plans, drawings, or other information submitted to the Agency by the Developer and for any other Agency consideration and approval hereunder which is contingent upon documentation required to be submitted by the Developer shall only apply and commence upon the Developer's complete submittal of all the required information. In no event shall an incomplete submittal by the Developer trigger any of the Agency's obligations of review and/or approval hereunder; provided, however, that the Agency shall notify the Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for the Agency's action on the particular item in question.

619. Attorney's Fees.

In any action between the parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees. Costs recoverable for enforcement of any judgment shall be deemed to include reasonable attorneys' fees.

620. Ceremonies.

To insure proper protocol and recognition of Agency Board members, the Developer agrees to cooperate with Agency staff in the organization of any project-related ground breakings, grand openings or any other such inaugural events/ceremonies sponsored by the Developer celebrating the development which is the subject of this Agreement. At least two weeks prior to any such event, the Developer agrees to provide Agency staff with a completed Event Information Form to be supplied by the Agency upon the Developer's request.

621. Administration.

This Agreement shall be administered and executed by the Agency's Executive Director, or his designated representative, following approval of this Agreement by the Agency. The Agency shall maintain authority of this Agreement through the Executive Director (or his authorized representative). The Executive Director shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the Agency so long as such actions do not substantially change the uses or development permitted on the Site, or add to the costs to the Agency as specified herein as agreed to by the Agency Board, and such amendments may include extensions of time specified in the Schedule of Performance. All other waivers or amendments shall require the written consent of the Agency Board.

622. Amendments to Agreement.

The Developer and Agency agree to mutually consider reasonable requests for amendments to this Agreement. Each party shall bear their own costs to consider any amendment to this Agreement, unless expressly agreed to otherwise.

623. No Waiver.

A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

624. Modifications.

Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

625. Computation of Time.

The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

626. Legal Advice.

Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

627. Compliance With Laws; Indemnity; Waiver. The Developer shall construct each applicable Phase of the Project in conformity with all applicable Governmental Requirements, including all applicable state labor laws and standards, all applicable Public Contract Code requirements, the City's applicable zoning and development standards, building, plumbing, mechanical and electrical codes, all other applicable provisions of the City's Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq. The Developer warrants and represents in connection with the foregoing that the Developer is a sophisticated, experienced developer of projects similar to the Project and is fully conversant with, and informed, concerning the Governmental Requirements with which the Developer must comply pursuant to this Section.

The Developer shall defend, indemnify and hold harmless the Agency, the City and their respective elected officials, officers, employees, agents and representatives from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and

expenses (including attorneys' fees and costs) (collectively, "Claims"), arising out of or in any way connected with the Developer's obligation to comply with all Governmental Requirements with respect to the work for the Project, including all applicable state labor laws and standards and the Public Contract Code, except to the extent such Claims result from actions of the Agency or the City, or their respective elected officials, officers, employees, agents or representatives, which prevent the Developer from complying with Governmental Requirements. If, at any time, the Developer believes that the Agency or the City, or their respective elected officials, officers, employees, agents or representatives, are preventing the Developer from complying with Governmental Requirements, then the Developer shall provide notice to the Agency of the basis of such conclusion by the Developer to enable the Agency and/or the City to take such actions as may be necessary or appropriate to enable the Developer to comply with Governmental Requirements.

627.1 Developer Acknowledgement. (a) DEVELOPER ACKNOWLEDGES THAT THE AGENCY HAS MADE NO REPRESENTATION, EXPRESS OR IMPLIED, TO DEVELOPER OR ANY PERSON ASSOCIATED WITH DEVELOPER REGARDING WHETHER OR NOT LABORERS EMPLOYED RELATIVE TO THE CONSTRUCTION, INSTALLATION OR OPERATION OF THE PRIVATE WORKS OF IMPROVEMENT CONSTITUTING THE PROJECT MUST BE PAID THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION, AS DETERMINED BY THE STATE OF CALIFORNIA, PURSUANT TO LABOR CODE SECTIONS 1720, ET SEQ. DEVELOPER AGREES WITH THE AGENCY THAT DEVELOPER SHALL ASSUME THE RESPONSIBILITY AND BE SOLELY RESPONSIBLE FOR DETERMINING WHETHER OR NOT LABORERS EMPLOYED RELATIVE TO THE CONSTRUCTION, INSTALLATION OR OPERATION OF THE PRIVATE WORKS OF IMPROVEMENT CONSTITUTING THE PROJECT MUST BE PAID THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION, AS DETERMINED BY THE STATE OF CALIFORNIA, PURSUANT TO LABOR CODE SECTIONS 1720, ET SEQ.

(b) DEVELOPER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES THE AGENCY FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO ANY OF THEM PURSUANT TO LABOR CODE SECTIONS 1726 OR 1781. DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 627.1, WHICH READS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

BY INITIALING BELOW, DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 627.1.

Developer's Initials

(c) ADDITIONALLY, DEVELOPER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE AGENCY, PURSUANT TO THIS SECTION 627.1, AGAINST ANY CLAIMS PURSUANT TO LABOR CODE SECTIONS 1726 AND 1781 ARISING FROM THIS AGREEMENT OR THE CONSTRUCTION, INSTALLATION OR OPERATION OF ALL OR ANY PORTION OF THE PRIVATE WORKS OF IMPROVEMENT CONSTITUTING THE PROJECT.

(d) ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, DEVELOPER SHALL ENSURE THAT ALL LABORERS EMPLOYED RELATIVE TO THE CONSTRUCTION OR INSTALLATION OF ANY PUBLIC IMPROVEMENTS CONSTRUCTED BY DEVELOPER SHALL BE PAID NO LESS THAN THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION, AS DETERMINED BY THE STATE OF CALIFORNIA, PURSUANT TO LABOR CODE SECTIONS 1720, ET SEQ.

Developer's Initials

7. ENTIRE AGREEMENT AND AMENDMENTS

701.

a. This Agreement is executed in five (5) duplicate originals, each of which is deemed an original.

b. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

c. All amendments to this Agreement must be in writing and signed by the appropriate authorities of Agency and Developer.

d. This Agreement includes pages 1 through 47 and Attachment Nos. 1 through 9, which constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

8. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by Developer and delivered to Agency, must be authorized, executed and delivered by Agency within sixty (60) days after date of signature by Developer or this Agreement shall be void, except to the extent that Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement. The

effective date of this Agreement shall be the date when this Agreement has been executed by the Agency.

*****SIGNATURES ON FOLLOWING PAGE*****

IN WITNESS WHEREOF, Agency and Developer have signed this Agreement as of the dates set opposite their signatures.

REDEVELOPMENT AGENCY OF THE
CITY OF CALEXICO

Dated: _____

by: _____
Victor Carrillo,
Executive Director

Calexico M.O.B., LLC

Dated: _____

by: _____
Warren Owens]
[Manager]

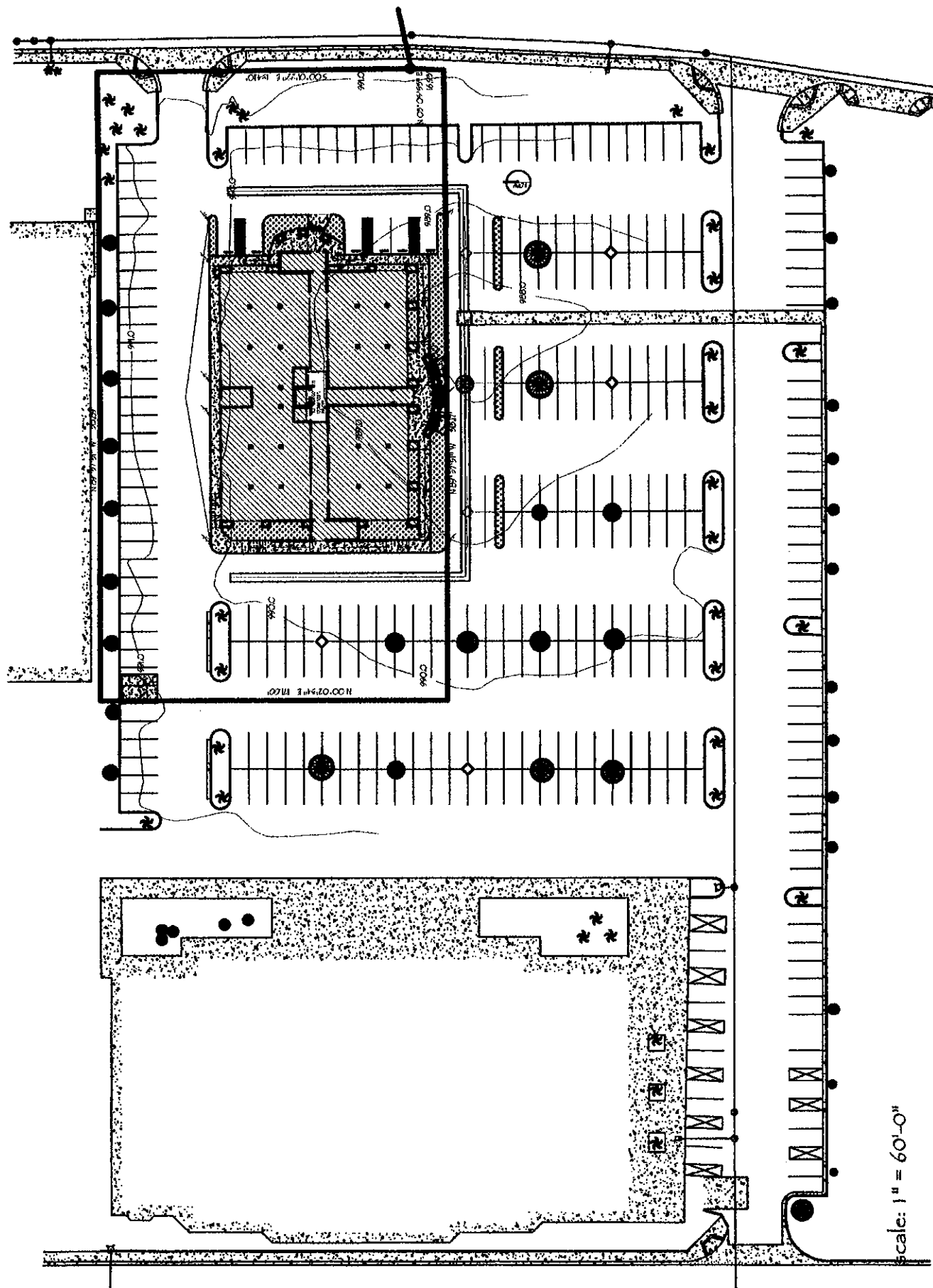
APPROVED AS TO FORM:

By: _____
Jennifer M. Lyon
City Attorney

By: _____
Thomas Roll
Attorney for Developer

ATTACHMENT NO. 1

SITE MAP



Attachment No. 2

SCHEDULE OF PERFORMANCE

ACTION	DATE
1. <u>Opening Escrow.</u> Parties shall open Escrow for the Sale of the Site. [Section 203]	No later than sixty (60) days after Agreement execution by Agency.
2. <u>Delivery of Title Reports.</u> Agency shall deliver to Developer standard CLTA preliminary title report with respect to the Site. [Section 210]	No later than thirty (30) days after the open of Escrow.
3. <u>Close of Escrow.</u> The Escrow shall close upon satisfaction by the parties of all Conditions Precedent set out in the Agreement. [Section 209]	Within sixty (60) days of satisfaction of all Conditions Precedent, but in no event later than 180 days after opening of Escrow.
4. <u>Submission of Developer entity documents and final pro forma.</u> [Section 208]	Within 15 days of Opening of Escrow.
5. <u>Submission of Construction Financing by Developer.</u> [Section 315(a)]	No later than 15 days after Opening Escrow.
6. <u>Approval of Evidence of Construction Financing.</u> Agency shall approve/disapprove evidence of construction financing submitted by Developer. [Section 315(b)]	No later than sixty (60) days after deliver of document acceptable to the City Manager/Agency Executive Director.
7. <u>Submission of Conceptual Schematic Site Plan Drawings.</u> Developer shall submit to Agency for approval, approval with conditions or disapproval. [Section 302(a)]	Prior to submission of the executed Agreement by Developer.

8. Approval of Conceptual Schematic Site Plan Drawings. Agency shall approve, conditionally approve or disapprove the Schematic Drawings and related documents for the Site. [Section 302(b), 305]

Concurrent with submission of the executed Agreement by Developer and within twenty-one (21) business days of receipt of Drawings.

9. Submission of Grading/Landscaping Plans and Construction Drawings. Developer shall submit to Agency for approval, approval with conditions or disapproval. [Sections 303, 304]

Prior to submission of the executed Agreement by Developer.

10. Approval of Grading/Landscaping Plans and Construction Drawings. Agency shall approve, conditionally approve or disapprove the Plans and Drawings and related documents for the Site. [Sections 303, 304, 305]

Concurrent with submission of the executed Agreement by Developer and within twenty-one (21) business days of receipt of Drawings.

11. Agreement Containing Covenants Affecting Real Property. Developer shall execute and record covenants and restrictions on the use and operation of the Site. [Sections 401, 402, 403, 404]

Concurrent with submission of the executed Agreement by Developer.

12. Submission of discretionary applications. Developer shall submit any required discretionary application(s). [Section 310]

Developer shall submit application(s) no later than ninety (90) days after receipt of such submittal requirement from City.

13. Processing of discretionary applications. The City shall process and either approve with conditions or disapprove submitted discretionary applications. [Section 310]

Within sixty (60) days of receipt of completed application(s) from Developer.

14. Submission of Final Plans and Construction Drawings. Developer shall prepare and submit Final Plans and Construction Drawings and Specifications to the Executive Director. [Sections 303, 304]

Within thirty (30) days after approval of any required discretionary approval.

15. Approval of Final Plans and Construction Drawings. Development Services Director shall approve, conditionally approve or disapprove the Final Plans and Construction Drawings and Specifications for the Site. [Sections 303, 304, 305]

Within thirty (60) days after receipt by Developer.

16. Governmental Permits. Developer shall obtain any and all permits required by the City or any other governmental agency. [Sections 213, 310]

Prior to the date set forth herein for the commencement of construction of the Improvements.

17. Submission of Certificates of Insurance. Developer shall furnish the Agency duplicate originals or appropriate certificates of bodily injury and property damage and worker's compensation insurance policies. [Section 216]

Prior to the date set forth herein for the commencement of construction of the Improvements.

18. Commencement of Construction. Developer shall commence construction of the Improvements. [Section 301]

Within ninety (90) days after approval of Final Construction Drawings.

19. Completion of Construction. Developer shall complete construction of the Improvements.

Within twelve (12) months after approval of Final Construction Drawings.

20. Final Certificate of Completion. Agency to issue Developer its Certificate of Completion. [Section 322]

Within thirty (30) days of the receipt by the Agency of the Certificate of Occupancy, provided that all terms of the DDA have been complied with.

ATTACHMENT NO. 3
SCOPE OF DEVELOPMENT

A MEDICAL OFFICE BUILDING OF APPROXIMATELY 25,000 SQUARE FEET

Attachment No. 3

ATTACHMENT NO. 4

GRANT DEED

| INSERT PROPOSED GRANT DEED

Attachment No. 4

EXHIBIT "A" TO ATTACHMENT NO. 4

LEGAL DESCRIPTION

Parcel 1 on Parcel Map No. 059-010-042:

THAT PORTION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.M., IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2; THENCE S 44°58'33" E, A DISTANCE OF 735.84 FEET; THENCE S 44°54'36" E, A DISTANCE OF 126.74 FEET; THENCE S 45°06'03" E, A DISTANCE OF 116.41 FEET; THENCE N 89°43'40" E, A DISTANCE OF 17.54 FEET; THENCE S 89°57'26" E, A DISTANCE OF 269.81 FEET ALONG THE NORTH LINE OF SAID PROPERTY DESCRIBED ON DEED RECORDED IN BOOK 1634, PAGE 816 OF OFFICIAL RECORDS; THENCE N 00°02'34" E, A DISTANCE OF 193.75 FEET TO THE TRUE POINT OF BEGINNING; THENCE S 89°57'51" E, A DISTANCE OF 313.17 FEET; THENCE N 03°05'53" E, A DISTANCE OF 16.93 FEET; THENCE N 00°01'22" W, A DISTANCE OF 154.10 FEET; THENCE N 89°57'51" W, A DISTANCE OF 313.89 FEET; THENCE S 00°02'34" W, A DISTANCE OF 171.00 FEET TO THE TRUE POINT OF BEGINNING.

SAID AREA CONTAINING 1.23 ACRES MORE OR LESS.

ATTACHMENT NO. 5

**DECLARATION OF
CONDITIONS, COVENANTS, AND RESTRICTIONS FOR THE SITE**

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
COMMUNITY REDEVELOPMENT AGENCY)
OF THE CITY OF CALEXICO)
608 Heber Avenue)
Calexico, California 92231)
Attn: Executive Director)
)

DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS

THIS DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS (this "Declaration") is entered into this _____ day of _____, 2010 by and between the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO, a public body, corporate and politic (the "Agency"), and Calexico M.O.B, LLC, a limited liability company (the "Developer"), with reference to the following facts:

A. The Agency and the Developer have entered into that certain Disposition and Development Agreement dated _____, 2010 (the "DDA") which provides for the development of that certain real property ("Site") which is legally described in ATTACHMENT NO. 4 which is attached hereto and incorporated herein by this reference. The DDA is available for public inspection at the Agency's offices located at 608 Heber Avenue, Calexico, California 92231. Capitalized terms utilized in this Declaration and not otherwise defined shall have the same meaning as set forth in Section 102 of the DDA.

B. The Site is within the Merged Central Business District and Residential Redevelopment Project in the City of Calexico and is subject to the provisions of the Redevelopment Plan for the Calexico Redevelopment Project which was approved and adopted by the City Council of the City of Calexico on _____, by Ordinance No. _____ as amended.

C. Developer has agreed with Agency to execute and record this Declaration in order to bind itself and future owners of the Site to certain obligations regarding the on-going use, operation and maintenance of the Site and certain other covenants, all as more particularly set forth herein.

D. The enforcement of the covenants and requirements set forth herein will ensure the proper implementation of the Redevelopment Plan and will, therefore, benefit the Developer, the City of Calexico, the Agency, and the properties located within the Redevelopment Project.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer on behalf of itself and its successors, assigns and each successor in interest to the Site or any part thereof, hereby covenants and agrees as follows:

1. Use Covenants. The Site shall be occupied and used only for those uses specified or permitted in the Redevelopment Plan, any conditions of approval for development of the Site required by the City, DDA, including the Scope of Development, the Grant Deed, and any applicable state and local laws.

3. Maintenance Covenant. The Developer agrees for itself and its successors in interest to maintain the Site and all improvements thereon in compliance with the terms of the Redevelopment Plan, with all applicable provisions of the City of Calexico Municipal Code, the DDA, and any conditions of approval for development of the Site required by the City.

4. Nondiscrimination Covenant. There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Developer itself, or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenant shall run with the land.

Developer shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, handicap, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person

claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(c) In contracts: In contracts relating to the sale, transfer or leasing of the Site or any interest therein: "There shall be no discrimination against or segregation of, any person, or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the premises."

5. Term. Unless specified otherwise herein or in the DDA, the covenants contained herein and in the DDA shall remain in effect for the term of the Redevelopment Plan, that is until December 31, 2043.

6. Covenants Run with the Land. The covenants and agreements established in this Declaration shall, without regard to technical classification or designation, be binding on the Developer, its successors and assigns and any successor in interest to The Site, or any part thereof, for the benefit of and in favor of the Agency, its successors and assigns, and the City.

7. Remedies. The Agency in an event of any breach of any of the covenants contained herein shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of the breach.

8. Severability. If any term, provision, condition or covenant of this Declaration or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Declaration, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

9. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Declaration.

10. Modification. The Agency, its successors and assigns, and the Developer and its successors and assigns in and to all or any part of the fee title to the Site shall have the right with the mutual consent of the Agency to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants herein without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Site. The covenants contained in this Declaration, without regard to technical classification, shall not benefit or be enforceable by any owner of any other real property within or outside the Redevelopment Project, or any person or entity having any interest in any other such realty.

IN WITNESS WHEREOF, the parties have executed this Declaration as of the date and year first written above.

AGENCY:

COMMUNITY REDEVELOPMENT AGENCY OF
THE CITY OF CALEXICO, a public body, corporate
and politic

Dated: _____, 2010

By: _____
Executive Director

ATTEST:

Secretary

DEVELOPER:

Calexico M.O.B., LLC, a California limited liability
company

Dated: _____, 2010

By: _____
Its: _____

ATTACHMENT NO. 6

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)

Pacific Media Properties)

Calexico, CA)

Attention: _____)

This document is exempt from the payment of a recording fee
pursuant to Government Code Section 6103.

CERTIFICATE OF COMPLETION

THIS CERTIFICATE OF COMPLETION (the "Certificate") is made by the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO, a public body corporate and politic (the "Agency"), in favor of Calexico M.O.B., LLC, a [California limited liability company] (the "Developer"), as of the date set forth below.

RECITALS

A. The Agency and the Developer have entered into that certain Disposition and Development Agreement (the "DDA") dated _____, 2010 concerning the redevelopment of certain real property situated in the City of Calexico, California as more fully described in Exhibit "A" attached hereto and made a part hereof. All capitalized terms utilized herein and not otherwise defined shall have the same meaning as set forth in Section 102 of the DDA.

B. As referenced in the DDA, the Agency is required to furnish the Developer or its successors with a Certificate of Completion upon completion of construction of the Improvements which Certificate is required to be in such form as to permit it to be recorded in the Recorder's Office of Imperial County. This Certificate is conclusive determination of satisfactory completion of the construction and development required by the DDA.

C. The Agency has conclusively determined that such construction and development has been satisfactorily completed.

NOW, THEREFORE, the Agency hereby certifies as follows:

1. The Improvements to be constructed by the Developer have been fully and satisfactorily completed in conformance with the DDA. All covenants relating to operating requirements, and use, maintenance and nondiscrimination covenants contained in the DDA shall remain in effect and enforceable according to their terms.

2. Nothing contained in this instrument shall modify in any other way any other provisions of the DDA.

IN WITNESS WHEREOF, the Agency has executed this Certificate this ____ day of _____, 20__.

COMMUNITY REDEVELOPMENT AGENCY OF
THE CITY OF CALEXICO, a public body corporate
and politic

By: _____
Executive Director

ATTEST:

Agency Secretary

ATTACHMENT NO. 7

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF CALEXICO
608 Heber Avenue
Calexico, California 92231
Attn: Executive Director

This document is exempt from payment of a recording fee pursuant to government Code Section 6103.

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Memorandum"), dated for identification purposes as of _____, 2010, is entered into by and between the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO, a public body corporate and politic ("Agency"), and Calexico M.O.B., LLC, a California limited liability company ("Developer").

1. **Disposition and Development Agreement.** Agency and Developer have entered into a Disposition and Development Agreement ("Agreement"), dated as of _____, 2010, which provides for the development of that certain real property located in the City of Calexico, County of Imperial, State of California, more fully described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Site"). The Agreement is available for public inspection and copying at the office of the Agency, 608 Heber Avenue, Calexico, California 92231. All of the terms, conditions, provisions and covenants of the Agreement are incorporated in this Memorandum by reference as though written out at length herein, and the Agreement and this Memorandum shall be deemed to constitute a single instrument or document.

2. **Purpose of Memorandum.** This Memorandum is prepared for recordation purposes only, and in no way modifies the terms, conditions, provisions and covenants of the Agreement. In the event of any inconsistency between the terms, conditions, provisions and covenants of this Memorandum and the Agreement, the terms, conditions, provisions and covenants of the Agreement shall prevail.

The parties have executed this Memorandum of Agreement on the dates specified immediately adjacent to their respective signatures:

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO:

Dated: _____, 2010

By: _____
Executive Director

ATTEST:

Secretary

DEVELOPER:

Calexico M.O.B, LLC, a California limited liability company

Dated: _____, 2010

By: _____

Its: _____

ATTACHMENT NO. 8
RECIPROCAL PARKING AGREEMENT
(insert final version)

Attachment No. 9

ATTACHMENT NO. 9

EXCERPT FROM TITLE POLICY (EXCEPTIONS)

Attachment No. 9

At the date hereof, exceptions to coverage in addition to the printed exceptions and exclusions in said policy form would be as follows:

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2010-2011.
2. Said land is shown as exempt on the Imperial County Tax Roll for the fiscal year 2009-2010. APN: 059-010-042-000
3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation Code of the State of California.
4. A Notice of Special Tax Lien by the Calexico Unified School District recorded May 28, 1991 as Document No. 91-09491 in book 1673, page 1220 of Official Records.

Reference is made to said document for full particulars.

Note: Said lien is currently being collected through the Imperial County Tax Collector with the property taxes. Both installments of the 2009-2010 taxes are exempt.

5. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: County of San Diego
Purpose: Right of Way
Recording Date: June 11, 1909
Recording No: in book 40, page 237 of Deeds

6. The ownership of said Land does not include rights of access to or from the street, highway, or freeway abutting said Land, such rights having been relinquished by the document,

Recording Date: November 15, 1961
Recording No: in book 1093, page 310 of Official Records

7. A notice that said Land is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the redevelopment plan) as disclosed by a document

Recording Date: December 29, 1993
Recording No: 93031595 in book 1755, page 1612 of Official Records
Redevelopment Agency: Central Business District and Residential Redevelopment Project

8. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document

Granted to: Imperial Irrigation District
Purpose: Overhead and/or underground facilities and appurtenances for the transmission and distribution of electricity. Communication facilities and appurtenances.
Recording Date: February 18, 1998
Recording No: 98003477 in book 1921, page 480 of Official Records
Affects: The easement in the aforesaid property shall be a strip of land, including all the area lying between the exterior sidelines, which sidelines shall be five (5) feet, measured at right angles, on each exterior side of each and every facility installed.

9. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled:	Memorandum of Lease
Lessor:	Oliphant and Williams Associates, Inc.
Lessee:	Metropolitan Theatres Corporation
Recording Date:	August 14, 1998
Recording No:	98018800 in book 1942, page 597 of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

An agreement to modify the terms and provisions of the said document, as therein provided

Executed by:	Community Redevelopment Agency of the City of Calexico and
Metropolitan Theatres Corporation	
Recording Date:	June 16, 2008
Recording No:	2008-016848 of Official Records

10. Any water rights or claims or title to water in or under the Land, whether or not shown by the public records.

NOTES

1. If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.